

R-0014

<b>AWARD / CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES 1 2	
2. CONTRACT (Proc. Inst. Ident.) NO. DACW54-99-D-0006		3. EFFECTIVE DATE 07/27/99		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. W81LJ8-9048-6671			
5. ISSUED BY CODE DACH54		6. ADMINISTERED BY (if other than Item 5) CODE		<p style="background-color: yellow;">The U. S. Army Corps of Engineers District which issues a Delivery Order against this contract. (The complete address will be provided on any issued Delivery Order.)</p>			
USAED WILMINGTON DISTRICT CONTRACTING DIVISION W81LJ8 PO BOX 1890 169 DARLINGTON AVE 28403 WILMINGTON NC 28402-1890  D. ASB STALLINGS C06 (910) 251-4785							
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)  INTERNATIONAL AMERICAN PRODUCTS INC  121 EXECUTIVE CENTER SUITE 230 COLUMBIA SC 29210		Vendor ID: 00000182					
8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)		9. DISCOUNT FOR PROMPT PAYMENT  00.000% 000 Net 030		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ITEM <div style="background-color: yellow; border: 1px solid black; padding: 2px; display: inline-block;">6.</div>			
CODE 0NRB9 FACILITY CODE		11. SHIP TO/MARK FOR CODE K770000		12. PAYMENT WILL BE MADE BY CODE W81LJ8		EFT: T	
LOGISTICS MGMT OFFICE USAED, WILMINGTON 69 DARLINGTON AVE (28403) WILMINGTON, NC 28402-1890		USAED FINANCE CENTER 7800 THIRD AVENUE MAIL STOP 322 VENDOR PAYMENT SECTION MILLINGTON TN 38054-5005					
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)		14. ACCOUNTING AND APPROPRIATION DATA 96X31250000 082448 2520A00001000120 NA 9633 Award Oblig Amt US\$ 0.00					
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
	Provide bottled drinking water for emergencies or major disasters, for the 48 Continental United States, Alaska, Hawaii, Guam, Puerto Rico and the U. S. Virgin Islands. This is a Requirements Contract as described in the Federal Acquisition Regulations (FAR) Subpart 16.5.				<div style="text-align: right;">             W. Stirling            Any            Office of Counsel            27 July 99            (Date)         </div>		
15G. TOTAL AMOUNT OF CONTRACT \$ 0.							
16. TABLE OF CONTENTS							
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award / contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award / contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER SHERRYL S. BURN K00 (910) 251-4866			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
<b>Base Period - Items 0001- 0007</b>					
<b>0001</b>	<b>Partnering Meetings - Base Period</b>	2	EA	Lump Sum	To Be Negotiated
<b>0002</b>	<b>Continental United States (CONUS) - Base Period</b>	0			
0002a	Bottled Drinking Water Delivered within 24 hours	0	LI	0.43	
0002b	Bottled Drinking Water Delivered between 24 and 48 hours	0	LI	0.43	
0002c	Bottled Drinking Water Delivered between 48 and 72 hours	0	LI	0.43	
0002d	Bottled Drinking Water Delivered after 72 hours	0	LI	0.43	
0002e	Unloading at Delivery Site by Contractor	0	LI	0.03	
0002f	Additional Ground Mileage	0	MI	2.06	
0002g	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>0003</b>	<b>Alaska - Base Period</b>	0			
0003a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.09	
0003b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.09	
0003c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.63	
0003d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.63	
0003e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.63	
0003f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.63	
0003g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.63	
0003h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.63	
0003i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	2.63	
0003j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.71	

### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
0003k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.71	
0003l	Unloading at Delivery Site by Contractor	0	LI	0.04	
0003m	Additional Ground Mileage	0	MI	5.12	
0003n	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>0004</b>	<b>Hawaii - Base Period</b>				
0004a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.10	
0004b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.10	
0004c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	3.10	
0004d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.76	
0004e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.76	
0004f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.76	
0004g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.76	
0004h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.76	
0004i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	2.76	
0004j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	2.76	
0004k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.78	
0004l	Unloading at Delivery Site by Contractor	0	LI	0.04	
0004m	Additional Ground Mileage	0	MI	5.12	
0004n	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>0005</b>	<b>Guam - Base Period</b>				
0005a	Bottled Drinking Water Delivered and Unloaded within 48 hours	0	LI	5.49	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
0005b	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	5.49	
0005c	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	5.49	
0005d	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	4.90	
0005e	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	4.90	
0005f	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	4.90	
0005g	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	4.90	
0005h	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	4.90	
0005i	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	4.90	
0005j	Bottled Drinking Water Delivered and Unloaded between 240 hours and 264 hours	0	LI	4.90	
0005k	Bottled Drinking Water Delivered and Unloaded between 264 hours and 288 hours	0	LI	4.90	
0005l	Bottled Drinking Water Delivered and Unloaded between 288 hours and 312 hours	0	LI	4.90	
0005m	Bottled Drinking Water Delivered and Unloaded between 312 hours and 336 hours	0	LI	4.90	
0005n	Bottled Drinking Water Delivered and Unloaded between 336 hours and 360 hours	0	LI	4.90	
0005o	Bottled Drinking Water Delivered and Unloaded between 360 hours and 384 hours	0	LI	4.90	
0005p	Bottled Drinking Water Delivered and Unloaded between 384 hours and 408 hours	0	LI	4.90	
0005q	Bottled Drinking Water Delivered and Unloaded between 408 hours and 432 hours	0	LI	4.90	



### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
0005r	Bottled Drinking Water Delivered and Unloaded between 432 hours and 456 hours	0	LI	4.90	
0005s	Bottled Drinking Water Delivered and Unloaded between 456 hours and 480 hours	0	LI	0.78	
0005t	Bottled Drinking Water Delivered and Unloaded after 480 hours	0	LI	0.78	
0005u	Unloading at Delivery Site by Contractor	0	LI	0.05	
0005v	Additional Ground Mileage	0	MI	5.18	
0005w	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>0006</b>	<b>Puerto Rico - Base Period</b>				
0006a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	1.79	
0006b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	1.79	
0006c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	1.79	
0006d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	1.79	
0006e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	1.79	
0006f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	1.79	
0006g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	1.79	
0006h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	0.71	
0006i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.71	
0006j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.71	
0006k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.71	
0006l	Unloading at Delivery Site by Contractor	0	LI	0.04	
0006m	Additional Ground Mileage	0	MI	5.23	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
0006n	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>0007</b>	<b>U.S. Virgin Islands - Base Period</b>				
0007a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	2.54	
0007b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	2.54	
0007c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.54	
0007d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.54	
0007e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.54	
0007f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.54	
0007g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.54	
0007h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.54	
0007i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.71	
0007j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.71	
0007k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.71	
0007l	Unloading at Delivery Site by Contractor	0	LI	0.04	
0007m	Additional Ground Mileage	0	MI	5.23	
0007n	Standby Time in Excess of Four Hours	0	HR	40.00	
<b>First Option Period - Items 1001-1007</b>					
<b>1001</b>	<b>Partnering Meetings - First Option Period</b>	2	EA	Lump Sum	To Be Negotiated
<b>1002</b>	<b>Continental United States (CONUS) - First Option Period</b>				
1002a	Bottled Drinking Water Delivered within 24 hours	0	LI	0.45	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
1002b	Bottled Drinking Water Delivered between 24 and 48 hours	0	LI	0.45	
1002c	Bottled Drinking Water Delivered between 48 and 72 hours	0	LI	0.45	
1002d	Bottled Drinking Water Delivered after 72 hours	0	LI	0.45	
1002e	Unloading at Delivery Site by Contractor	0	LI	0.04	
1002f	Additional Ground Mileage	0	MI	2.16	
1002g	Standby Time in Excess of Four Hours	0	HR	42.00	
<b>1003</b>	<b>Alaska - First Option Period</b>				
1003a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.24	
1003b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.24	
1003c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.76	
1003d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.76	
1003e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.76	
1003f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.76	
1003g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.76	
1003h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.76	
1003i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	2.76	
1003j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.75	
1003k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.75	
1003l	Unloading at Delivery Site by Contractor	0	LI	0.04	
1003m	Additional Ground Mileage	0	MI	5.38	
1003n	Standby Time in Excess of Four Hours	0	HR	42.00	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
<b>1004</b>	<b>Hawaii - First Option Period</b>				
1004a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.26	
1004b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.26	
1004c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	3.26	
1004d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.90	
1004e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.90	
1004f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.90	
1004g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.90	
1004h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.90	
1004i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	2.90	
1004j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	2.90	
1004k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.82	
1004l	Unloading at Delivery Site by Contractor	0	LI	0.05	
1004m	Additional Ground Mileage	0	MI	5.38	
1004n	Standby Time in Excess of Four Hours	0	HR	42.00	
<b>1005</b>	<b>Guam - First Option Period</b>				
1005a	Bottled Drinking Water Delivered and Unloaded within 48 hours	0	LI	5.76	
1005b	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	5.76	
1005c	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	5.76	
1005d	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	5.15	
1005e	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	5.15	



### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
1005f	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	5.15	
1005g	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	5.15	
1005h	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	5.15	
1005i	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	5.15	
1005j	Bottled Drinking Water Delivered and Unloaded between 240 hours and 264 hours	0	LI	5.15	
1005k	Bottled Drinking Water Delivered and Unloaded between 264 hours and 288 hours	0	LI	5.15	
1005l	Bottled Drinking Water Delivered and Unloaded between 288 hours and 312 hours	0	LI	5.15	
1005m	Bottled Drinking Water Delivered and Unloaded between 312 hours and 336 hours	0	LI	5.15	
1005n	Bottled Drinking Water Delivered and Unloaded between 336 hours and 360 hours	0	LI	5.15	
1005o	Bottled Drinking Water Delivered and Unloaded between 360 hours and 384 hours	0	LI	5.15	
1005p	Bottled Drinking Water Delivered and Unloaded between 384 hours and 408 hours	0	LI	5.15	
1005q	Bottled Drinking Water Delivered and Unloaded between 408 hours and 432 hours	0	LI	5.15	
1005r	Bottled Drinking Water Delivered and Unloaded between 432 hours and 456 hours	0	LI	5.15	
1005s	Bottled Drinking Water Delivered and Unloaded between 456 hours and 480 hours	0	LI	0.82	
1005t	Bottled Drinking Water Delivered and Unloaded after 480 hours	0	LI	0.82	
1005u	Unloading at Delivery Site by Contractor	0	LI	0.05	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
1005v	Additional Ground Mileage	0	MI	5.44	
1005w	Standby Time in Excess of Four Hours	0	HR	42.00	
<b>1006</b>	<b>Puerto Rico - First Option Period</b>				
1006a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	1.88	
1006b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	1.88	
1006c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	1.88	
1006d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	1.88	
1006e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	1.88	
1006f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	1.88	
1006g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	1.88	
1006h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	0.75	
1006i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.75	
1006j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.75	
1006k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.75	
1006l	Unloading at Delivery Site by Contractor	0	LI	0.05	
1006m	Additional Ground Mileage	0	MI	5.49	
1006n	Standby Time in Excess of Four Hours	0	HR	42.00	
<b>1007</b>	<b>U.S. Virgin Islands - First Option Period</b>				
1007a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	2.67	
1007b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	2.67	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
1007c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.67	
1007d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.67	
1007e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.67	
1007f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.67	
1007g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.67	
1007h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.67	
1007i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.75	
1007j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.75	
1007k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.75	
1007l	Unloading at Delivery Site by Contractor	0	LI	0.05	
1007m	Additional Ground Mileage	0	MI	5.49	
1007n	Standby Time in Excess of Four Hours	0	HR	42.00	
<b>Second Option Period - Items 2001-2007</b>					
<b>2001</b>	<b>Partnering Meetings - Second Option Period</b>	2	EA	Lump Sum	To Be Negotiated
<b>2002</b>	<b>Continental United States (CONUS) - Second Option Period</b>	0			
2002a	Bottled Drinking Water Delivered within 24 hours	0	LI	0.47	
2002b	Bottled Drinking Water Delivered between 24 and 48 hours	0	LI	0.47	
2002c	Bottled Drinking Water Delivered between 48 and 72 hours	0	LI	0.47	
2002d	Bottled Drinking Water Delivered after 72 hours	0	LI	0.47	
2002e	Unloading at Delivery Site by Contractor	0	LI	0.04	

**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
2002f	Additional Ground Mileage	0	MI	2.27	
2002g	Standby Time in Excess of Four Hours	0	HR	44.00	
<b>2003</b>	<b>Alaska - Second Option Period</b>				
2003a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.40	
2003b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.40	
2003c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.90	
2003d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.90	
2003e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.90	
2003f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.90	
2003g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.90	
2003h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.90	
2003i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	2.90	
2003j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.79	
2003k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.79	
2003l	Unloading at Delivery Site by Contractor	0	LI	0.04	
2003m	Additional Ground Mileage	0	MI	5.65	
2003n	Standby Time in Excess of Four Hours	0	HR	44.00	
<b>2004</b>	<b>Hawaii - Second Option Period</b>				
2004a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	3.42	
2004b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	3.42	
2004c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	3.42	

### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
2004d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	3.05	
2004e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	3.05	
2004f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	3.05	
2004g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	3.05	
2004h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	3.05	
2004i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	3.05	
2004j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	3.05	
2004k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.86	
2004l	Unloading at Delivery Site by Contractor	0	LI	0.06	
2004m	Additional Ground Mileage	0	MI	5.65	
2004n	Standby Time in Excess of Four Hours	0	HR	44.00	
<b>2005</b>	<b>Guam - First Option Period</b>				
2005a	Bottled Drinking Water Delivered and Unloaded within 48 hours	0	LI	6.05	
2005b	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	6.05	
2005c	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	6.05	
2005d	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	5.41	
2005e	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	5.41	
2005f	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	5.41	
2005g	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	5.41	

### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
2005h	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	5.41	
2005i	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	5.41	
2005j	Bottled Drinking Water Delivered and Unloaded between 240 hours and 264 hours	0	LI	5.41	
2005k	Bottled Drinking Water Delivered and Unloaded between 264 hours and 288 hours	0	LI	5.41	
2005l	Bottled Drinking Water Delivered and Unloaded between 288 hours and 312 hours	0	LI	5.41	
2005m	Bottled Drinking Water Delivered and Unloaded between 312 hours and 336 hours	0	LI	5.41	
2005n	Bottled Drinking Water Delivered and Unloaded between 336 hours and 360 hours	0	LI	5.41	
2005o	Bottled Drinking Water Delivered and Unloaded between 360 hours and 384 hours	0	LI	5.41	
2005p	Bottled Drinking Water Delivered and Unloaded between 384 hours and 408 hours	0	LI	5.41	
2005q	Bottled Drinking Water Delivered and Unloaded between 408 hours and 432 hours	0	LI	5.41	
2005r	Bottled Drinking Water Delivered and Unloaded between 432 hours and 456 hours	0	LI	5.41	
2005s	Bottled Drinking Water Delivered and Unloaded between 456 hours and 480 hours	0	LI	0.86	
2005t	Bottled Drinking Water Delivered and Unloaded after 480 hours	0	LI	0.86	
2005u	Unloading at Delivery Site by Contractor	0	LI	0.06	
2005v	Additional Ground Mileage	0	MI	5.71	
2005w	Standby Time in Excess of Four Hours	0	HR	44.00	
<b>2006</b>	<b>Puerto Rico - Second Option Period</b>				



**Schedule of Supplies and/or Services and Prices/Costs**

<b>Item No.</b>	<b>Description of Bid Item</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Estimated Amount</b>
2006a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	1.97	
2006b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	1.97	
2006c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	1.97	
2006d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	1.97	
2006e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	1.97	
2006f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	1.97	
2006g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	1.97	
2006h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	0.79	
2006i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.79	
2006j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.79	
2006k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.79	
2006l	Unloading at Delivery Site by Contractor	0	LI	0.06	
2006m	Additional Ground Mileage	0	MI	5.76	
2006n	Standby Time in Excess of Four Hours	0	HR	44.00	
<b>2007</b>	<b>U.S. Virgin Islands - Second Option Period</b>				
2007a	Bottled Drinking Water Delivered and Unloaded within 24 hours	0	LI	2.80	
2007b	Bottled Drinking Water Delivered and Unloaded between 24 and 48 hours	0	LI	2.80	
2007c	Bottled Drinking Water Delivered and Unloaded between 48 and 72 hours	0	LI	2.80	
2007d	Bottled Drinking Water Delivered and Unloaded between 72 hours and 96 hours	0	LI	2.80	
2007e	Bottled Drinking Water Delivered and Unloaded between 96 hours and 120 hours	0	LI	2.80	

### Schedule of Supplies and/or Services and Prices/Costs

Item No.	Description of Bid Item	Estimated Quantity	Unit	Unit Price	Estimated Amount
2007f	Bottled Drinking Water Delivered and Unloaded between 120 hours and 144 hours	0	LI	2.80	
2007g	Bottled Drinking Water Delivered and Unloaded between 144 hours and 168 hours	0	LI	2.80	
2007h	Bottled Drinking Water Delivered and Unloaded between 168 hours and 192 hours	0	LI	2.80	
2007i	Bottled Drinking Water Delivered and Unloaded between 192 hours and 216 hours	0	LI	0.79	
2007j	Bottled Drinking Water Delivered and Unloaded between 216 hours and 240 hours	0	LI	0.79	
2007k	Bottled Drinking Water Delivered and Unloaded after 240 hours	0	LI	0.79	
2007l	Unloading at Delivery Site by Contractor	0	LI	0.05	
2007m	Additional Ground Mileage	0	MI	5.76	
2007n	Standby Time in Excess of Four Hours	0	HR	44.00	

**Although Bottled Drinking Water Delivered is priced by the liter in this contract, the Contractor may provide the water in any bottle sizes from 12 ounces to 1.5 liters. The prices offered in this Section B must be for liters, regardless of the bottle sizes the Offeror expects to provide.**

**Section C**  
**Statement of Work**  
**for**  
**Bottled Drinking Water**

**C.1.0. GENERAL.**

**C.1.1. Purpose.** The purpose of this contract is to meet requirements for bottled drinking water in the forty-eight continental United States, Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands when the normal source of water may be, or has been, disrupted by an emergency or major disaster, as determined by the President of the United States under Title 42, United States Code, Chapter 68, Disaster Relief (hereafter, disaster), and when the U.S. Army Corps of Engineers is given that task by the Federal Emergency Management Agency. The contract requires immediate response, with timely production, delivery, and reporting by the Contractor. Time is of the essence in the Contractor's performance. The Contractor may be required to respond to simultaneous disasters, with multiple delivery sites for each disaster. The Contractor shall cooperate fully with public officials and other contractors in emergency and disaster response and recovery operations.

**C.1.2. Other Sources of Drinking Water.** The Government reserves the right to use bottled drinking water stored from previous disasters, donated water, bulk water, and water supplied by Department of Defense agencies to fulfill requirements for drinking water. The Contracting Officer is advised that there are approximately 1.0 million liters of bottled drinking water stored in Jacksonville, Florida. There may be additional stored water that is unknown to the Contracting Officer.

**C.1.3. Use of Local Firms and Individuals.** In performance of the contract, the Contractor is required to give preference in the expenditure of funds, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by the disaster.

**C.1.4. Continuous Liaison with the Government.** At the time of contract award, the Contractor shall identify a senior manager within the Contractor's organization, and a minimum of one similarly qualified alternate, as a continuously available liaison with the Government. The Contractor shall provide these individuals' names, business telephone numbers, cellular phone or pager numbers, facsimile numbers and electronic mail addresses. During the contract period, the Government shall be notified immediately of any changes regarding the designated liaisons. The Contractor shall be immediately available to the Government's representatives for receipt of delivery orders and discussion of contract performance. No separate payment shall be made for the continuous liaison.

**C.1.5. Contract Period.** This contract shall be for a base period from date of contract award to May 31, 2000. At the option of the Government, the First Option Period, for the period of June 1, 2000 through May 31, 2001, and a Second Option Period, for the period June 1, 2001 through May 31, 2002, may be exercised.

**C.1.6. Issuance of Delivery Orders.** As requirements are identified, delivery orders will be issued to the Contractor. Orders for water will identify: the date and time of the issuance of the order in local time at the delivery site; quantity; delivery site address; date and time for delivery; Government's

point of contact person; if applicable, name and phone number of Contracting Officer's Representative; if Unloading at Delivery Site by Contractor is ordered, description of the delivery site (including whether the site will be shared with others; whether unloading will be at a loading dock, into a trailer or other container, or onto the ground; and the number of loading dock doors, if any), and, if any, a description of any unloading equipment or personnel provided by the government at the delivery site; if applicable, outside the forty-eight continental United States, address of additional delivery site; and the name and address to which invoices shall be submitted.

**C.1.7. Release of Information.** Neither the Contractor nor the Contractor's representatives shall release any report, data, specification, photograph, cost estimate, or other information in any form obtained or prepared under this contract without prior specific written approval of the Ordering Officer.

**C.1.8. Conversion Factor for Gallons to Liters.** For this contract, the conversion factor for converting gallons to liters shall be 1 gallon equals 3.79 liters.

**C.2.0. PRODUCT AND PACKAGING REQUIREMENTS.**

**C.2.1. Product Standards.** As applicable, the water shall be produced, packaged, labeled, and transported in accordance with Title 21, Code of Federal Regulations, Parts 101, 110, 129, and 165, and all other federal, state and local laws and regulations.

**C.2.2. Primary Container.** The water shall be packaged in single-service polyethylene terephthalate (PET) bottles and may

be any size from 12 ounces to 1.5 liters, at the Contractor's discretion.

**C.2.3. Packaging of Shipping Cases.** Shipping cases shall be shipped on pallets. The cases shall be secured on the pallet with a minimum of double layers of shrink-wrap. Pallets shall be designed for pickup from all four sides. Due to the many unknown circumstances which can arise during disaster response and recovery, it is possible that the water may be moved several times and may be double-stacked for storage. The Contractor shall ensure that the bottled drinking water containers are packaged to withstand such handling and severe climatic conditions.

**C.2.4. Pallet Packing Slip.** Each pallet of bottled drinking water shall have labels attached clearly stating the information listed in Table 1, Pallet Packing Slip Information. Labels shall be placed under the interior of the outer-most layer of shrink-wrap. Labels are required on the top and at least two sides of all pallets of bottled drinking water.

**Table 1. Pallet Packing Slip Information**

1	U.S. Army Corps of Engineers Contract Number
2	Delivery Order Number
3	Contractor's Name
4	Name, Address and Telephone Number of Bottled Drinking Water Manufacturer
5	Name, Address and Telephone Number of Bottled Drinking Water Plant
6	Total Quantity on Pallet, in Liters
7	Manufacturer's Lot Container Code(s)



**C.2.5. Product Certification Documentation.** If requested by the Ordering Officer, the Contractor shall provide the Ordering Officer copies of the following information: applicable certificates, licenses, notifications, permits, appraisals, and inspection reports; chemical, physical and radiological annual analysis of source water and product samples; weekly bacteriological analysis of source water and product samples for the bottled drinking water supplied under this contract; results of any other testing of source water and bottled drinking water; and the date of production and the date of expiration of the bottled drinking water supplied under this contract. If requested, this information shall be provided within 6 hours.

**C.3.0. PERFORMANCE REQUIREMENTS.**

**C.3.1. Partnering.** The Contractor and the Government may agree that one or more informal partnering meetings will facilitate most effectively and efficiently drawing on the strengths of each party to perform the contract. If they agree on their representatives; the date, time, location, and estimated length of a meeting; and the Contractor's price, then the Government will issue a delivery order specifying this agreement. The travel and per diem shall not exceed that allowed by the Department of Defense Joint Federal Travel Regulation. The price for each meeting will be negotiated. Nothing in this paragraph, or in any partnering meeting shall change the terms of the contract.

**C.3.2. Operations Management.** The Contractor is responsible for providing all management and operations sufficient to meet the requirements specified in delivery orders, including, but not limited to, obtaining water, bottles, caps, labels, packaging, loading, transportation to delivery sites, unloading, quality

control, and reporting on all matters related to the contract. No separate payment will be made for operations management.

**C.3.3. Communication and Information Management.** The Contractor shall have and use in the performance of the work the following computer software: MS Office 97 Suite software including at least Word, Excel, PowerPoint, and Access; and either Netscape Navigator or Microsoft Internet Explorer browser software to access e-mail. Unless authorized in writing by the Ordering Officer, the software is not to be upgraded to a newer version for any delivery order. In addition to the software, the Contractor shall have, and use in the performance of the work, facsimile machines, cellular telephones, pagers and electronic mail usable throughout the Contractor's performance area. No separate payment will be made for the communication and information management.

**C.3.4. Performance Reporting.** Reporting on the status of the Contractor's performance is of extreme importance during disaster response and recovery. Records shall be established and maintained in an electronic format to continuously monitor and record information about water shipment quantities; bill of lading and manifest numbers; water departure locations, dates and times; shipping carriers' names and modes of transportation; final and intermediate water delivery sites; dates and times of all deliveries; future shipping and delivery schedules; and any other information required by the Government. The Government reserves the right to specify the format for the required information. Initially, after the issuance of a delivery order, required information shall be provided to the Government, as directed, at least every 4 hours. The schedule for reporting may be revised by the Ordering Officer, as appropriate. No separate payment will be made for performance reporting.

**C.3.5. Contractor Quality Control.** The Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The quality control system shall consist of plans, procedures, reports, and organization necessary to ensure compliance with the contract requirements. The quality control plan shall be submitted to the Contracting Officer for review and approval within five days after award of the contract. No separate payment will be made for contractor quality control.

**C.3.6. Transportation.** The Contractor shall be responsible for all transportation of the bottled drinking water to specified delivery sites. The Contractor shall comply with all applicable federal, state, and local laws and regulations in the transportation of the bottled drinking water. For each delivery, the Contractor shall provide a bill of lading or manifest, which includes at least the following: Contractor's name, U.S. Army Corps of Engineers contract number; delivery order number; itemized list of supplies, and quantities for each; name of shipment origination facility (bottling plant, warehouse, etc.); and name of transportation carrier. All expenses incurred to comply with these requirements shall be the Contractor's responsibility. No separate payment will be made for transportation.

**C.3.7. Delivery.**

**C.3.7.1. Quantities Ordered.** The Government will order bottled drinking water in quantities which approximate multiples of standard industry truckloads, approximately 18,000 liters per truck. For deliveries outside the forty-eight continental United States, the minimum quantity ordered for any day to a delivery

site will be 36,000 liters.

#### **C.3.7.2. Delivery Requirements.**

**C.3.7.2.1. General.** The Contractor shall deliver bottled drinking water in the quantities specified, to the delivery sites specified, and at the times specified in delivery orders. For disasters outside the forty-eight continental United States, the government may specify delivery sites within the disaster area, within the forty-eight continental United States, or in another area outside of the forty-eight continental United States. Unless Additional Ground Mileage is ordered, delivery sites for bottled drinking water outside the forty-eight continental United States will be at military or commercial airports or seaports. For delivery outside of the forty-eight continental United States, the Contractor shall deliver and unload the bottled drinking water at the specified airport or seaport within the time period specified for timely delivery.

**C.3.7.2.2. Delivery Documentation.** The Contractor shall assure that every water delivery is properly presented to the Government and that Government acknowledgement of every delivery is obtained. The Contractor shall be responsible for assuring that every delivery has all required documentation. Delivery shall be considered made when the Contractor has obtained acknowledgement of the date and time of the arrival at the delivery site by the on-site Government representative. Upon arrival at the delivery site, the Contractor shall document delivery by having its personnel:

a) Register water deliveries in the format shown in Appendix A, Water Delivery Information, with the Government's on-site representative;

b) Provide the bill of lading or manifest to the Government's on-site representative; and

c) Obtain a copy of the completed "Water Delivery Information" form from the Government's on-site representative.

**C.3.7.3. FDA Hold Notification.** If the Contractor or its subcontractors receive notification from the United States Food and Drug Administration that a shipment of bottled drinking water has not been released for distribution, the Ordering Officer shall be notified immediately. The Government will not be liable for any expenses or losses incurred by the Contractor due to such notifications. Before the Government will accept such a shipment of bottled drinking water, it will be the responsibility of the Contractor to provide and forward a copy of the release notification from the FDA to the Ordering Officer.

**C.3.7.4. Timely Delivery.** Times of issuance of delivery orders, and times specified for delivery in delivery orders will be expressed in local time at delivery sites. Unless stated in the delivery order, the time of issuance of the delivery order shall be considered to be 11:59 p.m., on the date of issue. The times of deliveries will be determined as the Time-In and Date-In recorded on "Water Delivery Information" forms. Deliveries will be considered timely if made at the specified delivery site within 2 hours before or after the time specified for delivery in the delivery order. The Contractor may attempt delivery and attempt to obtain acknowledgement of deliveries before and after the time periods allowed for timely delivery, however, the Government is not obligated to have an on-site representative available outside of those time periods.

**C.3.7.5. Early Deliveries.** In its discretion, the Government may allow early delivery before the specified time period for timely delivery, or may direct that deliveries be made only within the time allowed for timely delivery.

**C.3.7.6. Late Deliveries.** In the event of delivery after the time period specified for timely delivery, the Government, at its sole discretion, may allow such a delivery, credit it to the contract line item associated with the actual delivery time, and pay the Contractor at the unit price specified for the actual delivery time.

**C.3.7.7. Required Delivery Quantities.**

**C.3.7.7.1. Orders for Daily Quantities of 198,000 Liters or Less, per Delivery Site.** For orders of 198,000 liters or less, of bottled drinking water per day to any delivery site, delivery of the full ordered quantity is required for substantial performance of the contract requirements.

**C.3.7.7.2. Orders for Daily Quantities of More Than 198,000 Liters, per Delivery Site**

**C.3.7.7.2.1. Continental United States.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any delivery site within the forty-eight continental United States, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:



Within 24 hours, 25 % of the ordered quantity;

Between 24 and 48 hours, 50 % of the ordered quantity; and

Between 48 and 72 hours, 75 % of the ordered quantity.

**C.3.7.7.2.2. Anchorage and Fairbanks, Alaska.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any airport or seaport serving Anchorage or Fairbanks, Alaska, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

Within 24 hours, 25 % of the ordered quantity;

Between 24 and 48 hours, 50 % of the ordered quantity; and

Between 48 and 72 hours, 75 % of the ordered quantity.

**C.3.7.7.2.3. Oahu, Hawaii, and Maui, Hawaii.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any airport or seaport on Oahu, Hawaii, or Maui, Hawaii, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

Within 24 hours, 15 % of the ordered quantity;

Between 24 and 48 hours, 25 % of the ordered quantity;

Between 48 and 72 hours, 50 % of the ordered quantity; and

Between 72 and 96 hours, 75 % of the ordered quantity.

**C.3.7.7.2.4. Guam.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any airport or seaport on Guam, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

Within 48 hours, 25 % of the ordered quantity;

Between 48 and 72 hours, 50 % of the ordered quantity; and

Between 72 and 96 hours, 75 % of the ordered quantity.

**C.3.7.7.2.5. Puerto Rico, Puerto Rico.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any airport or seaport on Puerto Rico, Puerto Rico, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

Within 24 hours, 25 % of the ordered quantity;

Between 24 and 48 hours, 50 % of the ordered quantity; and

Between 48 and 72 hours, 75 % of the ordered quantity.

**C.3.7.7.2.6. St. Thomas, U.S. Virgin Islands.** Notwithstanding any other provision of the contract, for orders of more than 198,000 liters of bottled drinking water per day to any airport or seaport on St. Thomas, U.S. Virgin Islands, delivery of lesser

quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

Within 24 hours, 25 % of the ordered quantity;

Between 24 and 48 hours, 50 % of the ordered quantity; and

Between 48 and 72 hours, 75 % of the ordered quantity.

**C.3.8. Unloading.** The Contractor shall comply with all applicable federal, state, and local laws and regulations in the unloading of bottled drinking water. Time spent by the Contractor performing Unloading is not included in Standby Time.

**C.3.8.1. Unloading within the Forty-Eight Continental United States.** When specified in a delivery order, the Contractor shall unload bottled drinking water at delivery sites within the forty-eight continental United States. All expenses incurred to perform this work shall be the Contractor's responsibility.

**C.3.8.2. Unloading outside the Forty-Eight Continental United States.** The Contractor shall deliver and complete unloading bottled drinking water at airport and seaport delivery sites outside the forty-eight continental United States within the time period specified for timely delivery. When specified in a delivery order, the Contractor shall unload bottled drinking water at additional delivery sites outside the forty-eight continental United States. All expenses incurred to perform this work shall be the Contractor's responsibility.

**C.3.9. Additional Ground Mileage.** It is anticipated that deliveries may be required to locations in addition to the

delivery sites specified in delivery orders for deliveries within the forty-eight continental United States, and in addition to the airport and seaport delivery sites specified outside the forty-eight continental United States. Additional delivery sites in areas outside the forty-eight continental United States will be identified in delivery orders for airport and seaport delivery sites. Additional ground mileage for deliveries to any additional delivery sites will be paid for only on the basis of the mileage traveled between the previous delivery site and the additional delivery site(s). The price per mile shall be paid for each truckload of 18,000 or more liters of bottled drinking water or the equivalent, if delivery is by other than truckload of 18,000 or more liters. No per diem or other costs will be paid separately for additional ground mileage. Time spent by the Contractor performing Additional Ground Mileage is not included in Standby Time. The Government will determine the mileage between locations and record it on the "Water Delivery Information" form at the additional delivery site(s).

**C.3.10. Standby Time.** If the Contractor stands by at the direction of the Ordering Officer for more than four hours, at one or more delivery sites, when making delivery by truckload of 18,000 or more liters of bottled drinking water, then the Contractor shall be entitled to a maximum of ten hours per calendar day of standby time after the first four hours. No other payment will be made for standby time. The Contractor shall document its entitlement to standby time by having its delivery personnel register arrival and departure with the Government's on-site representative. These records will be used to determine the amount of standby time. The amount, if any, to be paid will be determined by rounding the elapsed time to the nearest hour.

**C.3.11. Invoices.** Invoices shall be accompanied by supporting calculations, associated "Water Delivery Information" forms, and bills of lading or manifests.

**C.4.0. Measurement and Payment.**

**C.4.1. Partnering Meetings.** Payment will be negotiated for each meeting. The price shall include all costs for attendance and participation in each partnering meeting.

**C.4.2. Bottled Drinking Water Delivered.** Each liter of bottled drinking water, delivered as specified within the forty-eight continental United States, shall be paid for in accordance with the Schedule of Supplies and/or Services and Prices, Items "Bottled Drinking Water Delivered." The price shall include all costs for delivering bottled drinking water. The quantity delivered will be determined from the "Water Delivery Information" forms.

**C.4.3. Bottled Drinking Water Delivered and Unloaded.** Each liter of bottled drinking water, delivered and unloaded as specified at airport and seaport delivery sites outside the forty-eight continental United States, shall be paid for in accordance with the Schedule of Supplies and/or Services and Prices/Costs, Items "Bottled Drinking Water Delivered and Unloaded." The price shall include all costs for delivering and unloading the bottled drinking water. The quantity will be determined from the "Water Delivery Information" forms.

**C.4.4. Unloading at Delivery Site by Contractor.** Each liter of bottled drinking water, unloaded as specified within the continental United States and at additional delivery sites outside the forty-eight continental United States, shall be paid

for in accordance with the Schedule of Supplies and/or Services and Prices/Costs, Items "Unloading at Delivery Site by Contractor." The price shall include all costs for unloading the bottled drinking water. The quantity will be determined from the "Water Delivery Information" forms.

**C.4.5. Additional Ground Mileage.** Each mile of additional ground mileage, for each truckload with 18,000 or more liters of bottled drinking water (or the equivalent, if delivery is by other than truckload of 18,000 or more liters), shall be paid for in accordance with the Schedule of Supplies and/or Services/Costs and Prices, Items "Additional Ground Mileage." The price shall include all costs for providing additional ground mileage. The quantity will be determined from the "Water Delivery Information" forms.

**C.4.6. Standby Time in Excess of Four Hours.** Each hour of standby time, in excess of four hours, for each truckload with 18,000 or more liters of bottled drinking water shall be paid for in accordance with the Schedule of Supplies and/or Services and Prices/Costs, Items "Standby Time in Excess of Four Hours." The price shall include all costs for providing standby time in excess of four hours. The quantity will be determined from the "Water Delivery Information" forms.



**WATER DELIVERY INFORMATION****Contract No.:** \_\_\_\_\_**Name of Disaster:** \_\_\_\_\_ **Load Number:** \_\_\_\_\_**Delivery Order Number:** \_\_\_\_\_**Delivery Site Name and Address:** \_\_\_\_\_  
\_\_\_\_\_**Time-In:** \_\_\_\_\_ **Date-In:** \_\_\_\_\_**Time-Out:** \_\_\_\_\_ **Date-Out:** \_\_\_\_\_**Reason, if difference between time-in and time-out exceeds four hours:**  
\_\_\_\_\_**Amount Delivered:** \_\_\_\_\_ **liters****Amount Unloaded by Contractor, if any:** \_\_\_\_\_ **liters****Additional Ground Mileage, if any:** \_\_\_\_\_ **miles****Transportation Carrier Name:** \_\_\_\_\_**Truck/Trailer/Vessel/Plane ID #:** \_\_\_\_\_**Bill of Lading/Manifest No:** \_\_\_\_\_**Person Making Delivery:** \_\_\_\_\_**Government Representative at Delivery Site:****Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_**Print Name, Job Title, Employer:** \_\_\_\_\_  
\_\_\_\_\_

## SECTION E INSPECTION AND ACCEPTANCE

### E.1 52.246-2 INSPECTION OF SUPPLIES--FIXED-PRICE (AUG 1996)

(a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or

(2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i)(1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

## E.2 52.246-16 RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

END OF SECTION E

SECTION F  
DELIVERIES OR PERFORMANCE

F.1 52.211-16 VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

10 Percent increase

10 Percent decrease

This increase or decrease shall apply to only bottled drinking water delivered.

(End of clause)

F.2 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

END OF SECTION F

## SECTION H SPECIAL CONTRACT REQUIREMENTS

### H.1 52.242-17 OFFEROR REQUIREMENTS (PRICING OPTION YEARS) (CESAW-CT Local Instruction 52.000-4018)

Offerors are required to submit an offer on all items in the Base Period and any listed Option Period. This contract is renewable at the option of the Government, for the award of any Option Period of work at the prices shown, by the Contracting Officer giving written notice of renewal to the contractor at least sixty (60) days before the end of the contract period. The same conditions for renewal are applicable to any Option Period of work at the expiration of the previous renewal.

(End of Instruction)

### H.2 52.242-17 CONTRACTOR'S SIGNATURE (FAR 4.102(a)) (CESAW-CT Local Note to Offeror 52.0204-4001)

#### (a) INDIVIDUALS.

A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as...".

#### (b) PARTNERSHIPS.

A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the contracting officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

#### (c) CORPORATIONS.

A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

#### (d) JOINT VENTURERS.

A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. When a corporation is participating, the contracting officer shall obtain from the corporation a certificate stating that the corporation is authorized to participate in the joint venture.

#### (e) AGENTS.

When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) above, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

(End)

### H.3 52.242-17 ORDERING (DELIVERY ORDERS FOR EMERGENCY CONTRACTS) (CESAW-CT Local Note to Offeror 52.0217-4003)

1. Delivery Orders against the contract may be issued by facsimile, by electronic mail, or in writing.

2. Delivery Orders may be issued by any U. S. Army Corps of Engineers (USACE) Division or District for deliveries to any geographic location specified in the contract. Within their Contracting Officer warrant limitations, all USACE Contracting Officers are hereby appointed as Ordering Officers for this contract, pursuant to AFARS 1.603-1(2).
3. Ordering Officers issuing Delivery Orders against this contract, will provide their name, phone and fax numbers and electronic mail address to the contractor.  
(End of Local Note)

H.4 52.242-17 Delivery Orders.  
(Local Instruction CESAW-CT 52.0217-4004)

1. Delivery Orders.
  - a. Deliveries will be scheduled against this requirements contract by issuance of a Delivery Order.
  - b. It is critical that the Delivery Order number be included on the applicable invoice.
  - c. WARNING. Only the Contracting Officer or USACE Ordering Officers for this contract, have authority to order supplies/services against this contract. No other Government employee, including any appointed Contracting Officer's Representative (COR), has authority to order supplies/services. The Contractor is hereby specifically directed to refrain from furnishing supplies/services that have not been ordered by the Contracting Officer or any USACE Ordering Officer for this contract. Failure to follow this direction may relieve the Government of liability for payment for services that were ordered by unauthorized employees.
  - d. DELIVERY ORDERS WILL CONTAIN:
    1. Date and time of issuance of the delivery order (in local time at the delivery site),
    2. Line items and the quantity ordered,
    3. Delivery site address,
    4. Date and time for delivery,
    5. Government's point of contact person for delivery site,
    6. Contracting Officer Representative (COR) name and phone number, if applicable,
    7. If Unloading at Delivery Site by Contractor is ordered, description of the Delivery Site (including whether the site will be shared with others; whether unloading will be at a loading dock, into a trailer or other container, or on to the ground; and the number of loading dock doors, if any), and if any, a description of any unloading equipment or personnel provided by the government at the Delivery Site; and address of additional delivery site(s) outside the forty-eight continental United States; and
    8. Name and address to which invoices are submitted.  
(End of Local Instruction)

H.5 52.242-17 ESTIMATED TOTAL QUANTITY.  
(Local Note CESAW-CT 52.0217-4006)

1. Because of uncertainties in the nature of emergencies and major disasters, and in the factors affecting the responses of the President and of the Federal Emergency Management Agency (FEMA) to emergencies and disasters, it is difficult to estimate the quantities that may be required under the contract.

2. The Contracting Officer is advised that during the past 10 years, the U. S. Army Corps of Engineers has purchased the following estimated quantities of bottled drinking water in fulfillment of tasks from FEMA:

Event	Quantity (Million Gallons)	Date	Location
Hugo	2.1	Sep 89	CONUS
Andrew	2.0	Aug 92	CONUS
'93 Flood	.1	93	CONUS
Del Rio	1.3	Aug 98	CONUS
Alberto	4.0	Jul 94	CONUS
Marilyn	1.2	Nov 95	US Virgin Islands
Fran	.7	Sep 96	CONUS
Bonnie	.23	Aug 98	CONUS
Georges	9.0	Sep 98	Puerto Rico

3. The Contractor is encouraged to make use of publicly available information about past weather-related disasters and about predictions for future weather events. The Contracting Officer is advised that such data is available from multiple sources and media, including the following internet sites:

<http://ciapubs.bilkent.edu.tr/publications/factbook>  
<http://typhoon.atmos.colostate.edu/forecasts/1998/nov98/index.html>  
<http://typhoon.atmos.colostate.edu/forecasts/1999/april99/>  
<http://www.fema.gov/nwz99/nhc601.htm>  
<http://www.nhc.noaa.gov/paststate.html>  
<http://www.nhc.noaa.gov/pastdec.html>  
<http://www.nhc.noaa.gov/ftp/pub/forecasts/discussion/MIATWOAT>

4. The estimated quantities stated in this solicitation are based on the Contracting Officer's best judgment. However, actual requirements may vary widely from these estimates, and it is possible that there could be no requirements at all during the contract period.

5. a. The estimated total quantities for the Base Period are:

1. 4,760,000 liters of Bottled Drinking Water Delivered,
2. 252,000 liters of Unloading at Delivery Site by Contractor,
3. 3,800 miles of Additional Ground Mileage, and
4. 40 hours of Standby Time in Excess of Four Hours.

b. The estimated total quantities for each Option Period (First Option Period and Second Option Period) are the same as for the Base Period.

(End of Local Note)

H.6 52.242-17 LOCAL LABOR PREFERENCE (MAR 1991) (ER 500-1-1)  
(CESAW-CT Local Instruction 52.0222-4002)

In performance of work included in the contract, the contractor shall, in procurement of supplies and equipment, awarding subcontracts, and in the employment of laborers and mechanics, give first priority to those residing in or doing business in the county(ies) identified at the end of this paragraph. This paragraph shall be included in all subcontracts awarded. Failure of the Contractor to comply with requirements of this paragraph may result in termination of the contract for default. County(ies):

Counties primarily in the area affected by the disaster.

(End of Instruction)

H.7 52.242-17 KINDS AND MINIMUM AMOUNTS OF INSURANCE REQUIRED:  
(CESAW-CT Local Instruction 52.0228-4014)

(1) Worker's Compensation and Employer's Liability.

In the amount required by law of the state in which work is to be performed under this contract or at least \$100,000.

(2) General Liability.

Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(3) Automobile Liability.

At least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage, or a combined single limit of \$500,000.

(End of Clause)

H.8 52.242-17 SAFETY PUBLICATIONS  
(CESAW-CT Local Note to Offeror 52.0236-4013)

The U. S. Army of the Corps of Engineers Safety Manual, EM 385-1-1, dated 3 September 1996, is applicable to work to be performed under this contract. The manual may be obtained without charge by applicants considered to be properly interested upon separate request to the Contracting Division issuing this solicitation.

(End)

H.9 52.242-17 YEAR 2000 COMPLIANCE  
(Local Note 52.0239-4001)

In accordance with FAR 39.106, the contractor shall ensure that with respect to any design, construction, goods, or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. Specifically:

- a. Perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order(s) which may be affected by the Y2K compliance requirement.
- b. Indicate whether each component is currently Year 2000 compliant or requires an upgrade for compliance prior to government acceptance.

(End of Local Note)

END OF SECTION H



## SECTION I CONTRACT CLAUSES

### I.1 52.202-1 DEFINITIONS (OCT 1995)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs

(c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Federal Government as part of an end item or of another component.

(e) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

## I.2 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-104.16 1952 MAR)

## I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain

Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

(R 7-103.20 1958 JAN)

(R 1-1.503)

(R 1-7.102-18)

#### I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

#### I.5 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

#### I.6 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY  
(JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL  
TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering

into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision

(b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is

allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions

(b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically



unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

#### I.9 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)

#### I.10 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interest. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

#### I.11 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)

#### I.12 52.216-18 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of contract award through [May 31, 2000](#) and through any exercised option period.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

#### I.13 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than [\\$25,000.00](#), the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor--

(1) Any order for a single item in excess of [24,000,000](#);

(2) Any order for a combination of items in excess of [28,000,000](#) liters or

(3) A series of orders from the same ordering office within [3](#) days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within [4 hours, not days after issuance](#), with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### I.14 52.216-21 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified

in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after one year from date of contract award, unless an option(s) is exercised..

(End of clause)

#### I.15 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within 60 days of the end of the contract period ; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed three (3) years.

(End of clause)

#### I.16 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

(a) Definition.

"Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

I.17 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract

(1) Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals means a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.

(4) Small business concern owned and controlled by women means a small business concern

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; and

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(End of clause)

I.18 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

I.19 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

I.20 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

I.21 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)

(R 7-103.17 1958 JAN)

(R 1-12.605)

I.22 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs

(b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States. (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

#### I.23 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

#### I.24 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as-

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;



(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

#### I.25 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period January through March 1st of the year the

report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

#### I.26 52.223-2 CLEAN AIR AND WATER (APR 1984)

(a) "Air Act", as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C.1251, et seq.).

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)  
(R 7-103.29 1975 OCT)  
(R 1-1.2302)

#### I.27 52.223-6 DRUG-FREE WORKPLACE (JAN 1997)

(a) Definitions. As used in this clause--

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall--within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency, and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

#### I.28 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on

or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

#### I.29 52.225-3 BUY AMERICAN ACT--SUPPLIES (JAN 1994)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract. (b) The Contractor shall deliver only domestic end products, except those--

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

(End of clause)

#### I.30 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

I.31 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

I.32 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or

decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

I.33 52.229-5 TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR  
PUERTO RICO (APR 1984)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

(AV 7-103.10(c) 1963 NOV)

(AV 1-11.401-3(a))

I.34 52.232-1 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

(R 7-103.7 1958 JAN)

(R 1-7.102-7)

I.35 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.  
(End of clause)

#### I.36 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

#### I.37 52.232-25 PROMPT PAYMENT (JUN 1997)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments.

(1) Due Date.

(i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and



any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraph (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) Additional interest penalty.

(i) A penalty amount, calculated in accordance with paragraph (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in paragraph (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments--

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

#### I.38 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER--OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) Mandatory submission of Contractor's EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by no later than 15 days prior to submission of the first request for payment.. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid

date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

I.39 52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (MAY 1999)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

USACE FINANCE CENTER Mailing Address: ATTN: EFT/DISBURSING 5720 INTEGRITY DRIVE MILLINGTON, TN 38054-5005 Telephone Number: 901-874-8547 Person to Contact: MR. LEE AUTRY Electronic Address: Shirley.L.Autry@usace.army.mil.

(End of clause)

I.40 52.232-38 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

I.41 52.233-1 I DISPUTES (OCT 1995)--ALTERNATE I (DEC 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim--

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using--

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(End of clause)

I.42 52.233-3 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

I.43 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)



I.44 52.243-1 CHANGES--FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

I.45 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

(a) Definition.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

I.46 52.248-1 VALUE ENGINEERING (MAR 1989)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

(4) Annual acquisition savings, which are the net reduction in acquisition cost to the Government of an item, resulting from an accepted Value Engineering Change Proposal which the Government determines to reduce the quantity requirements on either the instant contract, concurrent and/or future contracts during the shared period. "Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation cost) resulting from using the VECP on the instant contract or the amount of savings in annual acquisition cost per unit resulting from the procurement of a reduced total annual demand. In service contracts, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on the instant contract, multiplied by the appropriate contract labor rate. Unit

cost reduction for savings in annual acquisition cost will be determined by: old annual demand (OAD) of the old item multiplied by the old unit cost (OUC) minus "new" annual demand (NAD) of the new part multiplied by the new unit cost (NUC) and this quantity divided by the "new" annual demand (NAD):  $\{(OAD \times OUC) - (NAD \times NUC)\}/NAD$ .

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and  
(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only;  
(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or  
(iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS  
(figures in percent)

Contract Type	Sharing Arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (other than incentive)	50	50	25	25
Incentive (fixed-price or cost)	+	50	+	25
Cost-reimbursement (other than incentive)++	25	25	15	15

+ Same sharing arrangement as the contract's profit or fee adjustment formula.

++Includes cost-plus-award-fee contracts.

(g) Calculating net acquisition savings. (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

(i) Concurrent and future contract savings. (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) Collateral savings. If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) \$100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

#### I.47 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1 year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of

costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause:

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.



(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

#### I.48 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

I.49 52.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

I.50 52.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions.

As used in this clause--

(1) "Arising out of a contract with the DoD" means any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor;

or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

#### I.51 52.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

#### I.52 52.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998)

(a) Definitions. As used in this clause--

(1) "Central Contractor Registration (CCR) database" means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) "Data Universal Numbering System (DUNS) number" means the 9- digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) "Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent

business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) "Registered in the CCR database" means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://ccr.edi.disa.mil>.

(End of clause)

#### I.53 52.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

##### (a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be

determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

#### I.54 52.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions.

As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification.

By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

#### I.55 52.225-7032 WAIVER OF UNITED KINGDOM LEVIES (OCT 1992)

(a) Offered prices for contracts and subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The Offeror shall identify to the Contracting Officer all levies included in the offered price by describing--

- (1) The name of the U.K. firm;
  - (2) The item to which the levy applies and quantity; and
  - (3) The amount of levy plus any associated indirect costs and profit or fee.
- (b) If, after award of the prime contract, the Contractor contemplates award of a subcontract over \$1 million to a U.K. firm, the Contractor shall identify any levy before award of the subcontract and shall provide the following information to the Contracting Officer--
- (1) Name of the U.K. firm;
  - (2) Prime contract number;
  - (3) Description of item to which levy applies;
  - (4) Quantity being acquired; and
  - (5) Amount of levy plus any associated indirect costs and profit or fee.
- (c) The Offeror/Contractor should obtain assistance in identifying the levy from the U.K. firm. In the event of difficulty, the Offeror/Contractor may seek advice through Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW, Washington, DC 20006.
- (d) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.
- (1) Where levies are waived before contract award, the offer will be evaluated without the levy.
  - (2) Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.
  - (3) Where a waiver of the levy is obtained after award, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs, profit or fee.
- (e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over \$1 million with a U.K. firm is anticipated.

(End of clause)

I.56 52.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

(End of clause)

I.57 52.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(End of clause)

I.58 52.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) Definitions. As used in this clause--

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense (DoD)" means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract. However, effective May 1, 1996, the term does not include a supplier, materialman, distributor, or vendor of commercial items or commercial components.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) Supplies includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total.....			

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use. (g) The Contractor shall include this clause, including this paragraph

(g) in all subcontracts under this contract, which exceed the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation.

(End of clause)

END OF SECTION